

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review –)	MB Docket No. 02-277
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations)	
in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	

COMMENTS OF DAVID E. GRIFFITH

October 23, 2006

I. SUMMARY

David E. Griffith (“Mr. Griffith”) welcomes this opportunity to submit comments in the Federal Communications Commission’s (“Commission” or “FCC”) Further Notice of Proposed Rulemaking in the proceeding captioned: *In the Matter of Review of the 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB No.06-121, *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket No. 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, MM Docket No. 01-317, and *Definition of Radio Markets*, MM Docket No. 00-244 (“*Further Notice*”).

In its *Further Notice* the Commission noted problems with the degree of diversity present in smaller sized markets.¹ Unfortunately the current tiered system for ownership the Commission adopted exacerbates this diversity concentration problem. In order to rectify this shortcoming in its current ownership rules, Mr. Griffith urges the Commission to:

¹ *In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, MB Docket Nos. 06-121, (rel. July 24, 2006)(“*Further Notice*”) at 27.

1. Adopt uniform ownership rules that ensure that an entity may not own more than approximately 15% of the local commercial broadcast stations in any market regardless of market size.
2. Adopt rules that ensure that local ownership of broadcast stations is increased within a market trading area as part of the license renewal process, and is expanded as new stations are added to a market area.
3. Allow limited cross ownership of newspapers and television stations only in the largest markets where concerns of localism and diversity are satisfied.
4. Permit radio and television cross ownership that is consistent with requirements for diversity, local ownership and limited concentration.
5. Adopt rules that would expand minority ownership of broadcast stations at the local level.

II. NAME AND IDENTITY OF COMMENTER

1. The name and address of the commenter:

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2. Send all correspondence, and communications in this proceeding to:

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Mr. Griffith is a concerned citizen with more than 30 years experience in telecommunications, is a radio enthusiast, and is a proponent of media diversification and the preservation of the free speech and free press guarantees of the First Amendment..

III. INTRODUCTION AND BACKGROUND

Mr. Griffith respectfully submits these reply comments in response to the July 24, 2006, Further Notice of Proposed Rulemaking ("Further Notice" or "Ownership Rules Review") released by the Commission in the above-captioned proceedings.² Because of the critical impact action in this proceeding will have on the existing state of the media in this country, Mr. Griffith feels compelled to file these comments. Above all other considerations, the Commission must ask whether the decisions it is making with respect to these rules are "in the public interest."

IV. COMMENTS OF DAVID E. GRIFFITH

The *Further Notice* seeks comment on the following rule:

- ***Local Television Ownership Limit***³ -

² *In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, MB Docket Nos. 06-121, (rel. July 24, 2006) (“*Further Notice*”), Notice of Proposed Rulemaking, FCC 02-2771 (rel. Sept. 23, 2002) (“*2002 Notice*”), et al.

³ Under the current rule, a single entity may own two television stations in the same local market if (1) the so-called “Grade B” contours of the stations do not overlap; or (2) at least one of the stations in the

Background:

The Commission in 2003 voted to revise the local TV ownership rule to permit an entity to own up to two television stations in markets with 17 or fewer television stations, and up to three television stations in markets with 18 or more television stations. The rule revision was challenged in *Prometheus* and has not taken effect. The *Further Notice* seeks comment on whether the Commission should revise the number of stations that can be commonly owned or whether additional evidence or analysis exists that would further justify the limits adopted in 2003.

combination is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the market after the combination.

Discussion:

The Commission's terms used in this proceeding, "Local Television Ownership" and "Local Radio Ownership," are in fact misnomers. While the coverage area of the broadcaster is local, the current ownership of many stations is not local. As discussed in more detail in the section below concerning "Local Radio Ownership Limit," current and proposed Commission rules promote higher levels of concentration, and lower levels of diversity and true "local" ownership, or localism, in the smaller markets than in the largest markets. In the smaller markets current rules do not foster ownership diversity in the televised media. More concentration in any of these markets is not in the public interest. Entities should be restricted to owning no more than approximately 15% of the stations in any market as discussed in more detail in the Local Radio Ownership Limit section below.

Recent news items indicate that during 2004 the Commission prepared a report on behalf of its Localism Task Force that supports the premise that local ownership fosters more extensive coverage of local news.⁴ While the Commission initially withheld this report, the Commission eventually posted a copy of this document on its website in mid-September 2006. The Commission should take the findings of this report into consideration and conduct research into the public benefits of local ownership. A quote from the abstract of this report reads as follows:

We estimate the impact of local ownership on the number of local news seconds and local on-location news seconds during each station's half-hour local news broadcast. OLS results suggest that local ownership adds almost five and one-

⁴ John Eggerton, *Broadcasting & Cable*, September 14, 2006.

half minutes of local news, and over three minutes of local on-location news. These findings may have policy implications for both Congress and the Federal Communication Commission.⁵

The Commission should adopt rules that encourage the awarding of licenses of local television stations to entities or individuals who reside in the local service area of the station's broadcast Grade B contour.

Recommendation:

In order to foster more diversity and localism in local television market areas, Mr. Griffith recommends the following criteria be used to establish the Local Television Ownership Limit:

- 1) Permit an entity to own up to two television stations in market areas with 12 or more television stations.
- 2) Adopt rules that foster ownership by entities that are located (home office) within the Grade B contour service area of the broadcast television station.
- 3) Adopt rules that promote preferences for minority and women owned entities during licensing and the license renewal process.

The *Further Notice* seeks comment on the following rule:

- ***Local Radio Ownership Limit***

Background:

⁵ FCC Working Paper, Do Local Owners Deliver More Localism? Some Evidence from Local Broadcast News, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267448A1.pdf, (“*FCC Working Paper*”).

The current rules reflect numerical caps set by Congress in 1996. The restraints are based on a sliding scale that increases with the size of the local market.⁶ The Third Circuit in *Prometheus* questioned the rationale behind the Commission's decision to retain these caps. The *Further Notice* calls for comment on whether the limits should be revised or whether additional evidence exists to further justify retaining them as they are.

Discussion:

The current Commission sliding scale rules for Ownership Limits are seriously flawed. The so-called sliding scale that increases the number of stations that may be owned with the size of the local market, essentially forces the smallest markets to be the least diverse. A single entity potentially could have monopoly or near monopoly control in the smallest markets. While a 14-station market theoretically could be controlled by a minimum of three owners, smaller markets could be totally controlled by one, or two entities. The 15- to 29-station markets conceivably could be totally controlled by between three and five owners, and the 30- to 44- station markets by five to seven owners. Only in the largest markets are owners limited to controlling less than 15% of the total number of radio broadcast stations.

Recommendation:

⁶ As a general rule, one entity may own (a) up to five commercial radio stations, not more than three of which are in the same service (*i.e.*, AM or FM), in a market with 14 or fewer radio stations; (b) up to six commercial radio stations, not more than four of which are in the same service, in a market with between 15 and 29 radio stations; (c) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) radio stations; and (d) up to eight commercial radio stations, not more than five of which are in the same service, in a radio market with 45 or more radio stations.

In order to foster more diversity and localism in local television market areas, Mr. Griffith recommends the following criteria be used to establish the Local Radio Ownership Limits:

- 1) The rules should be rolled back so that entities could own no more than approximately 15% of the stations in any market regardless of market size. The “sliding scale” rule should be revised as follows to promote both diversity and localism:
 - a) In markets with up to 14 stations, an entity could own up to one commercial AM station and one commercial FM station.
 - b) In markets with 15 to 29 stations, an entity could own up to three commercial stations with no more than two in the same service.
 - c) In markets with 30 to 44 stations, an entity could own up to five commercial stations with no more than three in the same service
 - d) The current rule for markets of 45 or more stations fits the 15% criteria.
 - e) The Commission should also adopt rules that eventually would require that at least 50% of the owners of local radio stations in any market reside in the primary coverage areas of their broadcast contours.
- 2) Changes from current limits to the ones recommended above in 1) should be accomplished during the license renewal process beginning no later than January 1, 2010. Changes in ownership concentration may be accomplished through license sales, trades or transfers.

- 3) The Commission should also foster more local ownership by making more frequencies available for broadcast stations. The Commission should relax rules to permit more extensive use of second- and third-adjacent channels for low power FM (LPFM) in crowded markets. AM station ownership can be expanded through continued adjustment of antenna patterns and by reducing power allocations.

The *Further Notice* seeks comment on the following rule:

- ***UHF Discount Used in Calculating the National Television Ownership Limit –***

Background:

In 2004, Congress enacted legislation that permits a single entity to own any number of television stations on a nationwide basis as long as the station group collectively reached no more than 39 percent of the national TV audience. The *Further Notice* seeks comments on use of the UHF discount to determine compliance with the national cap.

Discussion:

While nationwide restrictions on ownership may foster diversity nationally, they have little relevance to the concept of localism in local markets. A more important factor for the Commission to consider is the degree of concentration at the local level.

Current rules for local ownership limits need to be changed to foster more diversity, reduce high levels concentration, and allow for an increased number of local owners.

Furthermore, access to cable and satellite systems by local UHF channels help to expand subscribership beyond what is normally considered within the station's broadcast contour.

Recommendation:

Mr. Griffith recommends the UHF discount not be used.

The *Further Notice* seeks comment on the following rule:

- ***Newspaper/Broadcast Cross-Ownership Ban*** –

Background:

The current rule prohibits common ownership of a full-service broadcast station (television or radio) and a daily newspaper if the station's service area completely encompasses the newspaper's city of publication. In the *2002 Order*, the Commission relaxed this rule and the separate radio/TV cross-ownership restriction by replacing both regulations with a set of "cross-media limits."⁷ The cross-media limits were challenged in *Prometheus*, and although the Third Circuit agreed that a flat ban on newspaper/broadcast combinations was no longer necessary, the court remanded the specific numerical caps to the Commission for further consideration.

Discussion:

⁷ The new limits were tiered according to the size of the local market: (a) in those with three or fewer TV stations, all newspaper/broadcast and radio/television combinations were prohibited; (b) in markets with between four and eight stations, an entity could own a combination that includes a newspaper and either (i) one television station and up to 50 percent of the radio stations that may be commonly owned under the applicable radio cap, or (ii) up to 100 percent of the radio stations allowed under the applicable radio cap; and (c) in markets with nine or more television stations, cross-media combinations would be permitted without limit as long as they complied with the applicable local television and local radio caps.

The number of newspapers in the U. S. is rapidly declining. Seattle, ranked as the 12th largest DMA,⁸ has only two daily newspapers. These newspapers are currently under a joint operating agreement. If this agreement is terminated (highly likely at the time of this filing), Seattle could become a one-newspaper town. Allowing media cross ownership in delicate newspaper markets, such as Seattle, could have ominous impacts on the public's access to a free and diverse press.

“It is true that a broadcasting station, like a newspaper, represents a private property. BUT the station functions under Government license on a publicly-owned channel and its very right of way is *owned* by every citizen.”⁹ While the Commission is solely focusing on the size of the local television market in its cross ownership rules, it should also be looking on how concentrated the local newspaper market is. The *2002 Order* prohibited combinations in markets with three or fewer television stations. The Commission should also consider prohibitions in markets with only one or two daily newspapers. The greatest threat to local diversity and the public interest will be where newspaper/broadcast combinations are not locally owned.

⁸ *FCC Working Paper*, Table One, page 20.

⁹ Samuel Kaufman, *Radio News*, August 1936, p. 70.

Recommendation:

Mr. Griffith recommends newspaper and television combinations only be permitted if the following conditions are met:

- 1) The daily newspaper's city of publication must have at least two other daily newspapers, the newspaper involved in the combination must be locally owned, and;
- 2) The television market must have 12 or more television stations, and the newspaper could own either; (i) one television station and up to 50% of the allowable radio stations, or (ii) no television station and up to 100% of the allowable radio stations, based on market size.

The *Further Notice* seeks comment on the following rule:

- ***Radio/Television Cross-Ownership Limit*** –

Background:

The current rule allows an entity to own one TV station (or two, if the market is large enough to trigger the “duopoly” provisions of the local television ownership rule) and a varying number of radio stations in a local market, depending on the number of independently owned media “voices” that are left. The *Further Notice* calls for input on how the agency should address radio/TV combinations now.

Discussion:

Mr. Griffith's comments have focused on a 15% guideline for maximum ownership across all markets for a given broadcast medium. This guideline is based on the

current upper limits of concentration anticipated for the largest markets. Cross-ownership within the two media should only be permitted when the resultant combination gives an overall concentration well below the 15% saturation level. For instance, an entity that is at saturation (15%) in one medium should not be permitted to acquire stations in a second medium. However if the entity's current holdings are significantly below saturation, some cross ownership may be permitted.

Recommendation:

Mr. Griffith recommends the following limits for cross ownership:

An entity may own both radio and television stations within a market provided that it owns no more than 50% of the maximum number of stations allowed for each medium based on market size, and provided the local market meets compliance requirements for local ownership and diversity.

The *Further Notice* seeks comment on the following rule:

- *Minority ownership* -

Background:

The *Further Notice* invites comment on the court's remand of certain proposals concerning minority ownership. It also lists pending petitions for reconsideration of the *2002 Order*. Interested parties may refresh the record concerning those petitions by responding during the 2006 comment period.

Discussion:

Diversity and localism have been cornerstones of broadcast regulation for decades.¹⁰ Broadcasters, are merely temporary trustees of the public's airwaves,¹¹ and must use the medium to serve the public interest. The Commission has consistently interpreted this to mean that licensees must provide programming that is responsive to the interests and needs of their communities of license. Although the Commission and Congress eliminated the Fairness Doctrine for in the 1980s, broadcasters still are expected to serve and represent their local communities.

As noted in reply comments Mr. Griffith made in response to the *2002 Notice*, greater local minority ownership of local broadcast stations is in the Public Interest. James Winston of the National Association of Black Owned Broadcasters has remarked that less than 2 percent of the country's radio broadcast stations (240 of more than 13,000), and only 2% of the television stations (only 20 of more than 1,000) are owned by African Americans.¹² Juan Gonzalez of the National Association of Hispanic Journalists noted that Univision controls 85% of the country's Hispanic broadcasting, but it is not Hispanic-owned.¹³ A recent study released by Free Press, indicates that

¹⁰ See, e.g., *Deregulation of Radio*, 84 F.C.C.2d 968, 994 ¶ 58 (1981) ("*Radio Deregulation Order*") ("The concept of localism was part and parcel of broadcast regulation virtually from its inception.").

¹¹ Broadcasters are considered to be temporary trustees of public spectrum because the Communications Act instructs the Commission to award licenses to use the airwaves expressly on the condition that licensees serve the public interest. See 47 U.S.C. § 309(a) (requiring the Commission to determine, in the case of applications for licenses, "whether the public interest, convenience, and necessity will be served by granting such application"). This model is often referred to, by commentators and the Commission itself, as one of public trusteeship. See, e.g., *Advanced Television Sys. & Their Impact upon the Existing Television Broadcast Serv.*, 12 FCC Rcd 12809, 12829 ¶ (1997) (noting that, even as they transition to digital technology, "broadcasters will remain trustees of the public's airwaves").

¹² James Winston, National Association of Black Owned Broadcasters, *Remarks at the FCC's Forum on Media Ownership*, Columbia Law School, January 16, 2003.

¹³ Juan Gonzalez, National Association of Hispanic Journalists, *Remarks at the FCC's Forum on Media Ownership*, Columbia Law School, January 16, 2003.

women own less than 5% of television stations in the U. S.¹⁴ Consolidation will not “bring about more minority ownership.”¹⁵

Recommendation:

The Commission must adopt rules that set targets and encourage more ownership among African Americans, Hispanic Americans, Asian Americans, other minority groups, and women owned businesses.

V. CONCLUSIONS

1. Adopt uniform ownership rules that ensure that an entity may not own more than approximately 15% of the local commercial broadcast stations in any market regardless of market size.
2. Adopt rules that ensure that current local ownership of broadcast stations is increased within a market trading area as part of the license renewal process, and is expanded as new stations are added to a market area.
3. Allow limited cross ownership of newspapers and television stations in the largest markets where concerns of localism and diversity are satisfied.
4. Permit radio and television cross ownership that is consistent with requirements for diversity, local ownership and limited concentration.

¹⁴ S. Derek Turner and Mark Cooper “Out of the Picture: Minority & Female TV Station Ownership in the United States,” Free Press, September 2006.
http://www.stopbigmedia.com/files/out_of_the_picture.pdf.

¹⁵ *Initial Comments of the Minority Media and Telecommunications Council* in MB Docket Nos. 02-277, et al, January 2, 2003, at 48.

5. Adopt rules that would expand minority ownership of broadcast stations at the local level.

I appreciate your consideration of these comments.

DATED at Seattle, Washington, this twenty-third day of October 2006.

DAVID E. GRIFFITH